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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,042	03/17/2001	Stuart L. Axelson JR.	S-003 (Systems)	5681
530	7590	05/04/2007	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			REIMERS, ANNETTE R	
		ART UNIT	PAPER NUMBER	
		3733		
		MAIL DATE		DELIVERY MODE
		05/04/2007		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/811,042	AXELSON ET AL.	
	Examiner	Art Unit	
	Annette R. Reimers	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 January 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) 1-42 and 74-81 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 43-73 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 November 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claims 1-42 is withdrawn. Claims 1-42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election/Restrictions

Applicant's election with traverse of Invention II, claims 43-73, in the reply filed on January 25, 2007 is acknowledged. The traversal is on the ground(s) that the search would not be a burden on the examiner. This is not found persuasive because "a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation of separate classification" (see M.P.E.P. § 808.02). In the instant case, the inventions have separate classifications. The requirement is still deemed proper and is therefore made FINAL.

Claims 1-42 and 74-81 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on January 25, 2007.

Specification

The abstract of the disclosure is objected to because it is too long. The Abstract should not exceed 150 words. Correction is required. See MPEP § 608.01(b). It does not appear that the Patent Office received the revised version of the abstract filed September 22, 2003.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 43-73 are rejected under 35 U.S.C. 102(e) as being anticipated by Tuke (US Patent Number 6,859,661).

Tuke discloses various embodiments of a system for guiding the resection of a patient's bone during arthroplasty, the system comprising a resection guide, e.g. 26, adapted for guiding a cutting device relative to a patient's bone during arthroplasty, an alignment guide coupled to the resection guide and adapted for attachment to the patient's bone, the alignment guide including a first assembly for positioning the resection guide along a translational path, a second assembly for positioning the resection guide along a first rotational path, and a third assembly for positioning the resection guide along a second rotational path, and a computer navigation system coupled to the resection guide, wherein the first and second rotational paths are about different axes, wherein the axes are transverse to each other, wherein the first, second and third assemblies each include a locking device for securing the resection guide along the translational path and the first and second rotational paths, wherein the system further includes an anchoring pin adapted to secure the alignment guide to a

patient's bone, wherein the system further includes a computer navigation tracker coupled to the resection guide, further comprising a plane probe, e.g. 10-12 and 13-15, via 4 and 5, the plane probe including a planar surface and coupling means for coupling the plane probe to a computer navigation tracker (see figures 1-8).

Response to Arguments

Applicant's arguments with respect to claims 43-73 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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EDUARDO ROBERT
SUPERVISORY EXAMINER